

Eastern Oyster Petition



Status Review Process and Next Steps

Petition Process

- ✓ NMFS has 90 days (to the maximum extent practicable) from receipt of the petition to publish a finding as to whether the petition (and the information in NMFS files) presents substantial scientific and commercial data to indicate that the petitioned action may be warranted.
- ✓ The 90 day finding is then published in the Federal Register (eastern oyster finding was published on May 18, 2005).
- ✓ If such a petition is found to present substantial information (a positive 90-day finding), NMFS promptly commences a review of the status of the species concerned (called a status review).
- ✓ Upon completion of the status review and within 12 months of receiving the petition presenting substantial information, the Secretary shall make one of the following findings (all require publication in the Federal Register):
 - The petitioned action is not warranted
 - The petitioned action is warranted, in which case, the Secretary shall promptly publish a general notice and the complete text of a proposed regulation to implement the action, or
 - The petitioned action is warranted but -
 - Immediate proposal and timely promulgation of the final regulation implementing the petitioned action is precluded by pending proposals to determine whether species are threatened or endangered, and
 - Expeditious progress is being made to list, delist or reclassify qualified species.

Next steps

- ✓ NMFS is currently assembling the status review team
 - State directors and the Atlantic and Gulf States Marine Fisheries Commissions have been asked to submit names and qualifications for potential state agency

representatives to the team. The Regional Administrators from the Northeast and Southeast Regions will determine the team structure.

- Representatives from NMFS Northeast and Southeast Fisheries Science Centers, Chesapeake Bay Office, Habitat Conservation Division, and Habitat Restoration Center have been asked to participate on the status review team.

Status review team

- ✓ Status review team members will be responsible for writing various sections of the status review document, reviewing it and providing comments on it.
- ✓ Representatives from NMFS Protected Resources Divisions in the Northeast and Southeast Regions and Headquarters will function as liaisons to the team.
- ✓ The review team will produce a biological review of the status of the species, which will be presented to the liaisons in order for NMFS to make a listing determination.
- ✓ The liaisons will divide the work load to include:
 - meeting logistics and planning
 - directing the status review team meetings
 - maintaining the status review document (e.g., compiling and incorporating edits and distributing drafts to all the team members)
 - ensuring that deadlines are met
 - writing various non-technical sections of the document
 - compiling the final draft document

Status review team schedule

- ✓ The first meeting of the status review team will be in July
 - oyster experts not on the core team will be asked to present information to the team at the first meeting
 - one of the first tasks to the team will be to determine if subspecies of eastern oysters exist and if so, what the range of these subspecies is.
- ✓ The 2nd meeting will be scheduled for sometime in September and the final meeting will be held in late October.
- ✓ A status review document will be presented to NMFS in October/November. NMFS will then prepare the 12-month determination utilizing the status review document.

Information to be compiled by the status review team

- ✓ historical and current distribution and abundance of this species throughout its range
- ✓ historic and current condition
- ✓ population status and trends
- ✓ information on any current or planned activities that may adversely impact the species, especially as related to the five factors specified in section 4(a)(1) of the ESA
- ✓ ongoing efforts to protect and restore the species and its habitat
- ✓ information indicating the existence of separate subspecies of eastern oysters based upon genetic data or other information

- ✓ Information on whether any particular portions of the range of the eastern oyster constitute significant portions of the range of the species or of any potential subspecies that may exist.

Listing determination

- ✓ The status review team will produce a document based on the best available scientific and commercial data, which provides NMFS with information on the current status of the species.
- ✓ This document will then be independently peer reviewed for accuracy according to the joint NMFS and U.S. Fish and Wildlife Service's peer review policy (59 FR 34270).
- ✓ NMFS will then use this information and apply the following five factors identified in section 4(a)(1) of the ESA to determine if listing as endangered or threatened is warranted:
 - (1) present or threatened destruction, modification, or curtailment of habitat or range
 - (2) overutilization for commercial, recreational, scientific, or educational purposes
 - (3) disease or predation
 - (4) inadequacy of existing regulatory mechanisms
 - (5) other natural or manmade factors affecting its continued existence.
- ✓ Pursuant to section 4(b)(1)(A), the Secretary shall make determinations required by section 4(a)(1) solely on the basis of the best scientific and commercial data available to him after conducting the status review and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction or the high seas.